

TAHIR JALALUDDIN HUSSAIN v. DHINAGARAN JAYABALAN

HIGH COURT MALAYA, PULAU PINANG
MOHD ZAKI YASIN J
[CIVIL SUIT NO: 22NCVC-129-03-2013]
19 NOVEMBER 2015

***TORT:** Defamation – Defamatory statements – Statements uttered by defendant during press conference reported in newspaper – Allegation that plaintiff received bribe – Whether impugned statements referred to plaintiff – Whether statements defamatory of plaintiff – Whether defendant knew actual person alleged to have committed bribery – Whether defendant acted within time upon receiving complaint regarding alleged bribery – Whether defendant’s action justified – Defence – Justification and qualified privilege – Whether established – Whether defendant motivated by malice*

The plaintiff was a councillor who served the Majlis Perbandaran Pulau Pinang and the defendant was a politician and a member of the Malaysian Indian Congress (‘MIC’). On 2 December 2012, it came to the plaintiff’s knowledge that there was an online article with a photographic image of him together with two other serving councillors being circulated in the internet. The article bore the following words “... Ahli Majlis Perbandaran DAP Pulau Pinang melakukan penipuan. Janda gagal mendapat balik wang rasuah RM25 ribu”. The plaintiff and the two councillors proceeded to lodge a police report on 24 December 2012 in relation to the said online article. The press statement made by them was reported in The STAR newspaper on 25 December 2012. On 11 January 2013, the defendant convened a press conference under the caption “youth leader gathering facts to back graft claim” which was subsequently published in The STAR newspaper on 12 January 2013. Thereafter, on 19 January 2013, the defendant convened another press conference where he made statements relating to the same subject matter and was published in The STAR newspaper the following day. The coverage of the same press conference was also made in the Oriental Daily. The plaintiff contended that the defendant’s statements were defamatory in nature against him and disparaged him in his office, profession and calling as the councillor. Hence, the plaintiff filed this suit against the defendant. The defendant admitted having made the press conference on both 11 January 2013 and 19 January 2013 in response to the allegation made by a businesswoman (‘SD1’) in relation to an alleged bribe received by councillor Prem Anand from SD1. The defendant alleged that he had CCTV footage of the councillor receiving money from SD1. In the circumstances, the defendant pleaded the defence of justification and qualified privilege. It was alleged that the defendant did not mention the plaintiff’s name during his press statement on 11 January 2013 and 19 January 2013. Instead, it was submitted that on 25 March 2013, the defendant had convened a press

- A conference *vide* Sinar Harian to absolve the defendant of his liability in having defamed the plaintiff at the material time. The issues that arose for consideration were (i) whether the impugned statements referred to the plaintiff; (ii) if the answer in (i) is answered in the affirmative, whether the impugned statements were defamatory of the plaintiff; and (iii) whether the defendant had established the defence of justification and qualified privilege.
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Held (allowing plaintiff's claim in part):

- (1) By not naming the councillor concerned, the defendant must in all probabilities have known that there was not one but three councillors featured in the said online article and must have also known them by their names since The STAR publication dated 25 December 2012 did publish the respective names of the said three councillors. The same publication was also published in the online article. In the circumstances, the defendant did actually utter and made reference to the said online article in both his press statements. (paras 46 & 47)
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- (2) The defendant never protested to The STAR and the Oriental Daily on the alleged inaccuracy of his statement. The stings of defamatory statements complained of by the plaintiff against the defendant were not the entire paragraphs of the reporting but the part that was so pleaded by him in his pleadings. The said words were exactly the words contained in The STAR newspaper in relation to the defendant's press statement on the specific dates. Further, the actual words spoken and uttered by the defendant as printed and published in The STAR newspaper had been pleaded by the plaintiff and no prejudice was caused to the defendant in putting up his defence. (paras 48-50)
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- (3) The general public of Penang, especially the readers of The STAR newspaper would, as early as 25 December 2012, have known that the plaintiff was one of the councillors imputed in the said online article when the plaintiff himself together with the councillor Ong Ah Teong and Prem Anand lodged a police report and made the press statement as published in The STAR dated 25 December 2012. The purpose of the said report and press statement was to seek the police intervention in tracing the perpetrator of the said online article. There was nothing sinister about it. (para 52)
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- (4) Long before the said plaintiff's press statement, the defendant knew that the councillor involved in the disparaging remark in the online article was Prem Anand alone and not the plaintiff or councillor Ong Ah Teong. In fact, the defendant knew about it as early as March 2012 when SD1 unequivocally informed him that it was Prem Anand who took her money. The defendant stated "A Penang Municipal Councillor", *ie*, in singular expression. It was questionable as to why
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- the defendant did not name the said corrupted councillor, especially when there was nothing to prevent him from excluding the plaintiff from the said allegation. (paras 53 & 54) A
- (5) *Vide* his second press statement on 19 January 2013, the defendant mentioned that he stood by his earlier statement and was willing to face the legal suit from the councillors. The word councillors there were uttered in the plural expression which made reference to the plaintiff too, since his image was featured as one of them. In the circumstances, the defendant's impugned statements were indeed directed to all the three councillors who were featured in the said online article, which would mean to include the plaintiff. Any reasonable minded person reading the defendant's impugned statement must have conceived in his mind that the corrupted councillor was either one of them, *ie*, the plaintiff, Ong Ah Teong or Prem Anand. (paras 55 & 56) B C
- (6) The words that "a Penang Municipal Councillor had sought and obtained bribe" did possess the tendency to excite an adverse opinion among members of the public against the plaintiff, in his official and personal capacity. The connotations and imputations drawn from the said impugned statement were capable of showing, *inter alia*, that the plaintiff was corrupted, had abused his position as councillor, had committed a criminal offence, had no integrity and moral values which tend to lower the plaintiff in the estimation of right thinking members of the society. The unchallenged evidence of the plaintiff that his fellow colleagues and friends had relentlessly queried him about his involvement in relation to the said impugned statement clearly illustrates the excitement that was generated by the said defendant's impugned statement. (para 58) D E F
- (7) The truth of the defamatory imputation must be one in relation to or against the plaintiff and one another. The defamatory imputations and connotation of the impugned statements were that the plaintiff had accepted bribe from a woman, the plaintiff had committed this act while holding the position as a councillor, the defendant had received this information and the defendant had the recording of a CCTV footage showing that the plaintiff had received bribe from the woman. The defendant knew as early as March 2012 till the time he made the impugned statement on 11 January 2013 and 19 January 2013 that the councillor who was alleged to have taken the money was not the plaintiff. In the circumstances, the defendant failed to establish the defence of justification. (paras 60-63) G H
- (8) The defendant declared in The STAR newspaper that he had the VCD downloaded from the CCTV which showed proof of the councillor concerned receiving money from the lady. It was questionable as to why the defendant did not lodge a report to either the police or the I

- A Malaysian Anti Corruption Commission but instead, declared it in the newspaper with the said impugned statements when the press had no corresponding duty to receive and publish. It was also questionable as to why the defendant decided to make such impugned statement only about ten months later, *ie*, in the year of the impending 13th general election. (para 65)
- B
- (9) There is no reciprocity of any duties or interest, *vis-a-vis* the impugned statement. The surrounding circumstances within which the defendant made the impugned statement showed that he was motivated by malice and desire to injure the credibility of the Pakatan Rakyat Coalition that was in governance of the Penang State with the corresponding and simultaneous affect of injuring the credibility and reputation of the plaintiff. As such, the defendant could not be said to have established or protected by the defence of qualified privilege. (para 66)
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- (10) The fact that the defendant had convened a press conference *vide* Sinar Harian on 25 March 2013 exculpating the plaintiff from the said bribery allegation, *ie*, three weeks after the plaintiff commenced this suit against him did not absolve the defendant of his liability in having defamed the plaintiff at the material time. In the circumstances, the defendant had cleared the plaintiff's name *vide* this press conference, although after the plaintiff filed this case. The plaintiff was granted general damages in the sum of RM80,000, interest and costs. (paras 67 & 68)
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Case(s) referred to:

- Astaire v. Campling and Another* [1965] 3 All ER 666 (*refd*)
- F *Carabao Exports Ptd Ltd v. Online Management Consultants Sdn Bhd & Ors* [1988] 1 LNS 88 HC (*refd*)
- Collins v. Jones* [1955] 2 All ER 145 CA (*refd*)
- Fullam v. Newcastle Chronicle & Jornal Ltd and Another* [1977] 3 All ER 32 (*refd*)
- Hassan & Anor v. Wan Ishak & Ors* [1960] 1 LNS 34 HC (*refd*)
- G *Joceline Tan Poh Choo & Ors v. V Muthusamy* [2003] 3 CLJ 705 CA (*refd*)
- Karpal Singh Ram Singh v. DP Vijandran* [2001] 3 CLJ 871 CA (*refd*)
- Le Mercier's Fine Furnishings Pte Ltd & Anor v. Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590 HC (*refd*)
- MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912 CA (*refd*)
- H *Mohd Nazari Ab Majit v. Tan Keo Hock & Anor* [1999] 1 CLJ 601 HC (*refd*)
- S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC (*refd*)

Legislation referred to:

Evidence Act 1950, s. 58(1)

- I For the plaintiff - Simon Murali; M/s Lio & Partners
For the defendant - Kumarathiraviam; M/s Lee Hean Cheng & Co
- Reported by Kumitha Abd Majid*

JUDGMENT

A

Mohd Zaki Yasin J:**Factual Background**

[1] The plaintiff at the material time was a councillor serving the Majlis Perbandaran Pulau Pinang (MPPP).

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[2] The defendant at the material time was a politician and a member of the Malaysian Indian Congress (MIC), in which he held the positions of the Ketua Pemuda MIC Negeri Pulau Pinang and the Bendahari Kehormat of Pergerakan Pemuda MIC Kebangsaan MIC.

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[3] On 2 December 2012 or a date approximate thereto, the plaintiff came to know about an online article bearing a photographic image of him in suit together with two other serving councillors of MPPP being circulated in the internet *via* the website of *www.imagnews.com.my* ("the online article"). The inscription in Chinese language across the photographic image reads (its translation):

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skandal – Ahli Majlis Perbandaran DAP Pulau Pinang melakukan penipuan. Janda gagal dapat balik wang rasuah RM25 ribu.

And at the bottom of the photographic image is another inscription in Chinese language that reads (its translation):

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Imej bersih dan jujur Ahli Majlis Perbandaran Kerajaan DAP terjejas akibat kejadian ini.

[4] Since the author or whoever responsible for the circulation of this online article has yet to be ascertained, the plaintiff and two other affected councillors had on 24 December 2012 lodged a police report followed by their press statement. The press statement made by the trio was covered by The STAR daily newspaper and published in its issue of the 25 December 2012.

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[5] On 11 January 2013, the defendant convened a press conference. There, the defendant made statements that were published in The STAR issue of 12 January 2013 under the caption "Youth leader gathering facts to back graft claim".

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[6] The relevant excerpt of the report in The STAR that captured the statements by the defendant reads as follows:

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A state MIC Youth leader claims he received information confirming that a Penang Municipal Councillor had sought and obtained bribes from a woman, as mentioned in an online article. State MIC Youth Chief J Dhinakaran said he was in the process of gathering facts and called on the Councillor to own up and refund the money to the woman within seven days. "If the councillors fails to do so, we will lodge a police report" he said and urged the police to conduct investigations into the graft allegation without awaiting a report from the Malaysian Communications and Multimedia Commission.

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A [7] On, 19 January 2013, the defendant convened another press conference. There, again he made statements relating to the same subject which were published in The STAR's newspaper of the following day issue under the caption "I have proof, says Dhinakaran".

The relevant excerpt of the report which captured the statements reads:

B The state MIC Youth Chief is claiming he has CCTV footage showing a Penang Municipal Councillor receiving money from a businesswomen here as reported in an online article. J Dhinakaran said he was in possession of a CD with a three minutes CCTV footage, which showed the Councillor receiving the money at the women's house between
C February and March last year. I have proof but I am not naming the culprit. I stand by my (earlier) statement and I am willing to face the legal suit from the councillors, he told reporters at the State Barisan Nasional headquarters here yesterday.

D [8] The plaintiff contends that the said statements made by the defendant on the two press conferences as reported in The STAR issue of 12 January 2013 and 20 January 2013 were defamatory of him and disparaged him in his office, profession and calling as the MPPP Councillor. Hence this suit against the defendant, seeking for a perpetual prohibitory injunction, publication of unconditional apology and retraction, general, aggravated and exemplary damages with interest and cost.
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[9] The defendant in his defence while admitting having made the said two press statements averred that he is neither the author nor the publisher of certain paragraphs of the said published statements and their headings. The defendant while does not deny that the online article referred to in his said
F press statements is the online article that was circulated *via www.imagnews.com.my*, also averred that the plaintiff's unwitting association with the allegation levelled by the woman concerned was as a result of the publication of the said online article which was already within the public domain since 21 December 2012 and not as a result of his press statements.

G [10] In the alternative, the defendant pleaded the defence of justification and of a qualified privilege.

The Plaintiff's Case

H [11] The plaintiff testified himself as a witness (SP4) and called three other witnesses for his case.

[12] SP1, the court's interpreter who had translated all the impugned article in this case corrected his translation of "Ahli Majlis Bandaraya" for the mandarin inscription in the online article (at p. 344B) to be read as "Ahli Majlis Perbandaran".

I [13] SP2, Josephine Bernadette Jallen, the journalist with the daily newspaper The STAR confirmed that the publication in The STAR issue on 20 January 2013 (at p. 6B) was her own coverage of the press statement made

by the defendant that was held at the Barisan Nasional's Head Quarters, Jalan Dato' Keramat Penang on 19 January 2013. In her cross-examination she admitted that column 1, 2, 3 in the said STAR publication were the reporting of what the defendant had actually said in that conference and the other column there, were the news background which she herself wrote based on the publication by The STAR dated 25 December 2012 on the press conference made by the three councillors whose image appeared in the said online article under the caption "councillors want probe" (at p. 20B). SP2 further said that the defendant then was not holding in his hand any online article but upon her visit to the relevant website in her computer at her office to see for herself the contents of the online article referred to by the defendant in his press statement she confirmed that the said online article was similar to one at p. 3B. SP2 finally said, subsequent to her reporting in The STAR, the defendant had never protested or made any request for his said published statements be corrected.

[14] SP3, Goh Wei Kong, the journalist from the daily newspaper the Oriental Daily who also made the coverage of the same press conference by the defendant on 19 January 2013 which was published in the Oriental Daily issue dated 20 January 2013 (at pp. 7-9B) agreed that the defendant did not in his press conference mention the name of the councillor who was said to be involved in the alleged scandal. She however said "tidak ingat" whether the defendant did actually say the same as she had reported ie, "Beliau berkata, Ahli MPPP yang disyaki adalah Ong Ah Teong, Prem Anand dan Tahir, salah satu daripada tiga orang ini". In reference to the defendant's picture in the Oriental Daily's publication at p. 7B, SP3 confirmed that the defendant was holding a CD.

[15] The plaintiff (SP4) said apart from him, whose image featured on the left, the other two photographic images in the online article are Ong Ah Teong and Prem Anand Loganathan who were at the material times serving the Majlis Perbandaran Pulau Pinang (MPPP). Felt distressed and humiliated by the inscription across their said photographic image and at the bottom of it, he and the other two affected councillors had on 24 December 2012 lodged a police report followed by their press statement over the same matter. Their said statement was published in The STAR newspaper's issue dated 25 December 2012 (at p. 20B).

[16] SP4 further said while the police was yet to identify the people behind the circulation of the said online article, the defendant had on 11 January 2013, made a press conference which statement was published in The STAR issued dated 12 January 2013 under the caption "Youth leader gathering facts to back graft claim" (at p. 5B). He said the statement which reads "A state MIC Youth Leader claims he received information confirming that a Penang Municipal Councillor had sought and obtained bribes from a woman, as mentioned in an online article", had clearly defamed him as he was one of the three councillor featured in the said online article.

A [17] When the defendant on 19 January 2013 made another press
conference with his statement published in The STAR dated 20 January
2013, SP4 said the defendant had again defamed him. The reporting there
that “A state MIC Youth Chief claim he has CCTV footage showing a Penang
Municipal Councillor receiving money from a business woman here as
B reported in an online article”, is clearly in reference to the same online
article for which he was featured as one of the councillors.

[18] SP4 added that apart from the defendant said statements on 19 January
2013 being published in The STAR, his same press statement was also
published in Chinese newspaper, the Oriental Daily’s issue dated 20 January
C 2013 (at pp. 7-9B). In the Oriental Daily the defendant was quoted to have
said “Ahli MPPP yang disyaki adalah orang Ah Teong Prem Anand dan
Tahir, salah satu daripada tiga orang ini”. This statement according to SP4
had the effect and imputation on him as being one of the said councillors.

D [19] SP4 testified that all said statements made by the defendant were
defamatory of him and disparaged him in his office as the MPPP Councillor
as the statement had the connotation and imputations that he, among others,
had cheated and accepted bribe from a woman and abused his position as a
councillor. SP4 added as a result of the said defendant’s statement he felt
distress and humiliated when his political party’s friends, other Councillor
E of MPPP and members of public had relentlessly queried him whether he
had actually received the bribe as alleged in the said published statements
although he had repeatedly refuted it.

[20] SP4 said he then through his solicitor had sent out the notice of action
dated 30 January 2013 demanding for the defendant to retract and apologise
F for all his statements in both daily newspaper (pp. 12-14B), but the defendant
in his reply dated 25 February 2013 (pp. 15-16B) said that he would stand
by his said press statement neither did he exonerate him not be the councillor
referred to by him in his said press statement.

G [21] In cross-examination, SP4 said he ceased to become the councillor in
June 2013 after completed serving his term. He further said that he was a
member of UMNO party and had never become the member of PKR or DAP
party, hence he agreed that his appointment as councillor was not on a DAP’s
ticket. Although he agreed that he was working closely with the Majlis
Rundangan Kontraktor class F, Pulau Pinang which was chaired by Dato’
H Abdul Malik Kassim, the EXCO from PKR party but claimed no knowledge
if he was appointed on the PKR’s ticket. SP4 confirmed that both Councillor
Ah Teong and Anand were the member’s of DAP party.

I [22] SP4 disagreed to the suggestion that whoever read the said online
article would have known that Ahli Majlis Perbandaran DAP Pulau Pinang
inscribed there were referring to either Ong Ah Teong and Anand and not
him as he was not a DAP member.

[23] SP4 agreed that the defendant had made a press statement that was reported in Sinar Harian (p. 23B) exculpating him and councillor Ong Ah Teong for the said alleged bribery and cheating of a woman, but the said Sinar Harian's statement was only made on 26 March 2013, that was after he had instituted this action on 8 March 2013.

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The Defendant's Case

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[24] Poovaneswari Verapperumal (SD1) who took over the business "recycle items" from her late husband testified for the defendant said, she had approached the defendant who was then the MIC Youth Chief in March 2012, to seek help from for the return of her RM10,000 which she had paid to councillor Prem Anand. She explained, she paid the said money to Prem Anand when he had promised to help her to secure the recycle items licence for her business. According to her when the enforcement of MPPP continued the raid on her business premise for not having such a license, she had tried to verify from Prem Anand but the latter in turn had come out with all sort of excuses and refused to refund her money.

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[25] She further said that she had also handed over the CD downloaded from her CCTV set at her business premises to the defendant's secretary when the defendant asked for proof of payment to Prem Anand.

[26] She added that when the defendant made the said statement in The STAR, although the defendant did not mention any name of the councillors concerned in his press statement, but she knew the defendant was referring to councillor Prem Anand and she did not know the plaintiff and the other councillors of MPPP. She further said, it was only after the defendant said press statement that Prem Anand had returned her RM10,000 money to her.

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[27] The defendant himself (SD2) in his testimony said that he had nothing to do or have any connection with the said online article and that he first came to know about the said online article when he read the press statement made by the plaintiff himself as published in The STAR dated 25 December 2012 under the caption "councillors want probe".

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[28] It was through this plaintiff's own press statement, the defendant said, that the contents of the online article became to be in the domain of public knowledge and by the same press conference, the plaintiff had self associated himself with the allegation contained in the said online article.

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[29] The defendant admitted having made the press conference on both on 11 January 2003 and 19 January 2003 and that was being convened after SP1 Puan Poovaneswaran NP Veraperumal who is also known as Mrs Saravanan approached him in early March 2012 with her complaint that the MPPP Councillor had demanded money from her for the recycle item's license. The defendant however stressed that he did not mention any name of the councillor involved, more particularly the plaintiff's name in the said two press conferences.

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- A [30] The defendant further denied having made any reference to the said online article or uttered the word “online article” in his both press statements as reported in The STAR. He claimed that it was the reporter Josephine Bernadette Jalleh herself (SP2) made such reference as the said online article was something that the reporters from various daily newspapers discussed among themselves.
- B [31] The defendant further said, even if he had referred to the said online article in his press statements, the allegation as inscribed in it, could not have possibility imputed the plaintiff in any way for the inscription there reads “Ahli Majlis Perbandaran DAP Pulau Pinang melakukan penipuan”,
- C whereas the plaintiff is not a councillor from DAP.
- [32] In reference to the Oriental Daily where he was quoted to have mentioned the names of the three councillors in the online article, the defendant vigorously denied it, saying the reporter SP2 from The STAR who was present at the same conference did not report the same in its publication.
- D [33] The defendant emphasised that whatever he had said in his press statement were all true as he had also be given by SP1 the CD downloaded from the CCTV installed at her office serving as a proof of his said statements, the CD of which he had handed over to the SPRM when he lodged the report. He said it was his responsibility as a politician and being
- E entrusted by SD1 to highlight the ill conduct of the particular councillor and to help her getting her money back.
- [34] The defendant reiterated despite him had never mentioned the plaintiff's name in his said press statement on 11 January 2013 and
- F 19 January 2013 but he on his own initiative had helped clearing the plaintiff's name by making a press conference that was published in the Sinar Harian newspaper dated 16 March 2013 when he said the plaintiff and councillor Ong Ah Teong were not involved in the said bribery.
- G [35] In his cross-examination, the defendant admitted that upon hearing Mrs Saravanan's grouzers as early as March 2012, he knew about the identity of the particular councillor who was alleged to have taken the money but did not do anything since then and made the press statement only on 11 January 2013 and 19 January 2013 and lodged the report to SPRM only on 29 March 2013.
- H [36] The defendant also conceded that the year 2013 is the year for the general election was supposed to be held but denied that his said press statement was aimed at undermining the image of the State Government of Pakatan Rakyat Comprises of DAP, PKR and PAS who appointed the said councillors.
- I [37] The defendant also admitted that he never complained to The STAR about his being misquoted in its publication and never wrote the MPPP about the conduct of its councillor in the said bribery.

[38] In re-examination, the defendant said he took such a long time to come out with his said press statement despite knowing about the said bribery by the particular councillor in early March 2012 as he needed time to gather evidence for the said allegation.

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Agreed Facts

[39] The agreed facts are as enumerated in encl. D, are as follows:

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(1) that at the material time, the plaintiff was a councillor serving the Majlis Perbandaran Pulau Pinang;

(2) that at the material time, the defendant was a politician and a member of the Malaysian Indian Congress (MIC), in which he held the positions of;

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(a) Ketua Pemuda MIC Negeri Pulau Pinang; and

(b) Bendahari Kehormat (Honourable Treasurer) of Pergerakan Pemuda MIC Kebangsaan (MIC National Youth);

D

(3) that on 11 January 2013 and 19 January 2013, the defendant made statements in press conferences held on those dates, which were attended by members of media including a journalist from “The Star”;

(4) that the statements made in the press conferences were related to an online article under the website of *www.imagnews.com.my*;

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(5) that the article contained a photographic image of the plaintiff together with two other councillors;

(6) that the statements made by the plaintiff in those two press conference were published in local dailies, which included, “The Star”;

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(7) that the statement defendant made in the press conference dated 11 January 2013 was published in “The Star” issue of 12 January 2013 under the caption “Youth leader gathering facts to back graft claim”, wherein the first paragraph of the report heads;

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A state MIC youth leader claims he received information confirming that a Penang Municipal Councillor had sought and obtained bribes from a woman, as mentioned in an online article;

(8) that the statement defendant made in the press conference dated 19 January 2013 was published in “The Star” issue of 20 January 2013 under the caption “I have proof says Dhinakaran – MIC Man CD shows councillor receiving bribes”;

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(9) *vide* solicitor’s letter dated 30 January 2013, the plaintiff demanded the defendant, *inter alia*:

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(i) to apologise to him; and

(ii) to retract the statements the latter made in the two press conferences; and

- A (10) The defendant refused to accede to the demand, as expressed in his letter dated 25 February 2013.

Issues

- B [40] Although annexure C set out six issues sought to be determined but I am of the view, only four are pivotal to the final determination of this case, and they are:
- C (i) whether the impugned statements refer to the plaintiff in his capacity as Councillor of the Majlis Perbandaran Pulau Pinang;
- (ii) if the answer to the above is affirmative, whether the impugned statements are defamatory of the plaintiff;
- (iii) whether the defendant has established the defence of justification as pleaded in para. 18 of the amended defence;
- D (iv) whether the defendant has established the defence of qualified privilege as pleaded in para. 22 of the amended defence.

Findings Of This Court

- E [41] In order to have a clear perspective of this case, the relevant impugned statements which the plaintiff pleaded in his pleadings to be defamatory of him are reproduced below:

The STAR dated 12 January 2013

A state MIC Youth leader claims he received information confirming that a Penang Municipal Councillor had sought and obtained bribes from a woman as mentioned in an online article ...

- F The STAR on press conference made 19 January 2013

A state MIC Youth leader is claiming he has received footage showing a Penang Municipal Councillor receiving money from a business woman here, as reported in an online article ...

- G The Oriental Daily dated 20 January 2013

Beliau berkata Ahli MPPP yang disyaki adalah Ong Ah Teong, Prem Anand dan Tahir, salah satu daripada 3 orang ini.

- H [42] Although on the evidence thus far available, there is no proof as to who was responsible behind the making and the circulation of the said online article but, there is no issue in this case, that such inscription across the three photographic images of the plaintiff and the other two councillors there (as at pp. 3-4B) has clearly disparaged the plaintiff in his office as the MPPP councillor.

- I [43] Now, on behalf of the defendant, it was submitted that the plaintiff who has the evidential burden to prove his case should not be allowed to be relieved of his burden by conveniently relying on the agreed fact when the evidence adduced is not supportive of his assertions that the plaintiff “semasa

memberi pernyataan akhbar kepada ahli-ahli media termasuk wartawan akhbar “The STAR” defendan telah memegang dan merujuk kepada material/dokumen yang berkaitan dengan “online article” tersebut” (para. 12.5 of the plaintiff pleading) and that “innuendo” wujud dan boleh dikesan daripada pernyataan tersebut” (para. 12.6 of the plaintiff’s pleading). Whereas The STAR reporter, SP2 said the defendant was not then holding in his hand any online article. Notwithstanding the submission by both parties on the legal position of the statement of agreed facts as expounded in s. 58(1) Evidence Act 1950 and the pronouncement made in the case of *Mohd Nazari Ab Majit v. Tan Keo Hock & Anor* [1999] 1 CLJ 601 and *Carabao Exports Ptd Ltd v. Online Management Consultants Sdn Bhd & Ors* [1988] 1 LNS 88; [1988] 3 MLJ 271, it is to be noted that there is no such admission of the defendant then was holding in his hand the said online article in the statement of agreed fact. What is admitted there was that the statements made in the press conference were related to an online article under the www.imagnews.com.my.

[44] Be that as it may despite no such assertion of the plaintiff being proved, the entire evidentiary value of the other claims of the plaintiff is to be assessed in the light of other evidence and circumstances (see *Mohd Nazari Ab Majit (supra)*).

[45] In this case, the plaintiff admitted that he was not there at the press conference held by the defendant and that he had to rely on what was published in The STAR and Oriental Daily. Now, the defendant, as was featured in the Oriental Daily seen to be holding a CD in his hand. This was confirmed by SP3. The defendant may not then be holding the said online article but he had never as undisputed, objected or protested to the reporting in The STAR on both occasion of him having said respectively “as mentioned in an online article” and “as reported in an online article”.

[46] The defendant himself said the contents of the said online article has become to be in the domain of public knowledge by the plaintiff and the other councillor’s own press statement as was published in The STAR on 25 December 2012 (at p. 20B) prior to him making his statement on 11 January 2013 and 19 January 2013. Hence, by not naming the councillor concerned, it would have meant that the defendant must in all probabilities have known that there was not one but three councillors featured in the said online article and must have also known them by their name as the said 25 December 2012’s STAR publication did publish the respective names of the said three councillors. It is to be noted the same publication also published the websites address of www.imagnews.com.my.

[47] It is therefore my finding that the defendant did actually utter and make reference to the said online article in his both press statements.

[48] On the same vein, although the defendant refuted having said what was reported in certain paragraphs in both said publication of The STAR, I have no reason not to accept SP2’s evidence that column 1, 2, 3 of her reporting

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A on 19 January 2013 contained what the defendant had actually said in his press statement, it is especially so, when the defendant had never protested to The STAR and the oriental daily on the alleged inaccuracy of his said statement.

B [49] It is crucial to note that the stings of defamatory statements as complained of by the plaintiff against the defendant are not the entire paragraphs of the reporting but the part as was so pleaded by him in his pleading ie, as reproduced at para. 41 above. The said words are exactly the words of The STAR's newspaper reporting of the defendant's said press statement on the specific dates. Further the extrinsic fact that was the online article and the contents of which were also pleaded in the same pleading.

C I do not see, with respect, the uncertainty of the said words as complained of by the defendant and in what aspect the plaintiff is said to have failed to plead the extrinsic and special facts in his pleading. The case of *Astaire v. Campling and Another* [1965] 3 All ER 666; *Collins v. Jones* [1955] 2 All ER 145 CA and *Le Mercier's Fine Furnishings Pte Ltd & Anor v. Italcomm (Malaysia) Sdn Bhd* [1996] 3 CLJ 590; *Fullam v. Newscastle Chronicle & Jornal Ltd and Another* [1977] 3 All ER 32, *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912; [1995] 2 MLJ 493 referred to by the defendant on the point of the certainty of words spoken and such extrinsic fact to the innuendo must be kept in the context of the fact of those cases.

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[50] If the failure to plead the actual words is held not to be fatal, here, the actual words spoken and uttered by the defendant as printed and published in the "STAR" newspaper had been pleaded in the pleadings and I do not see what prejudice it causes to the defendant in putting up his defence.

F (see *Hassan & Anor v. Wan Ishak & Ors* [1960] 1 LNS 34; [1961] 1 MLJ 45; *Karpal Singh Ram Singh v. DP Vijandran* [2001] 3 CLJ 871; [2001] 3 AMR 3625 CA).

[51] Notwithstanding that, going by the evidence of SP2 and SP3 who both agreed that the defendant had never mentioned the name of the councillor concerned, and the evidence of SP3 herself who could not recall whether the defendant had actually said "Ahli MPPP vang disyaki adalah Ong Ah Teong, Prem Anand dan Tahir, salah satu daripada tiga orang ini", I have no reason to disbelieve the defendant that he had never said such words, it is especially so, for the earlier paragraph of the same reporting in the Oriental Daily ie,

G "Ketua Pemuda MIC Pulau Pinang, Dhinakaran berkata ... tambahan lagi ahli Majlis Perbandaran tersebut telah memulangkan wang, oleh itu tidak akan mengumumkan nama Ahli Majlis Perbandaran tersebut".

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[52] So, the defendant made no specific mention of the plaintiff's name in the said press conference. Then, who is the person or persons the said impugned statements made by the defendant refer to? Yes, the general public of Pulau Pinang especially the readers of The STAR newspaper would as early as 25 December 2012 have known or aware that the plaintiff was one of the councillors imputed in the said online article when the plaintiff himself

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together with the councillor Ong Ah Teong and L Prem Anand lodged a police report and made the press statement as published in The STAR dated 25 December 2012. The purpose of the said report and press statement by the trio is obvious ie, to seek police intervention to trace the perpetrator of the said online article. There is to my mind nothing sinister about it.

[53] On the other hand, it is also undisputed that long before the said plaintiff's press statement the defendant had known that the councillor involved in the disparaging remark in the online article is L Prem Anand alone and not the plaintiff and councillor Ong Ah Teong. Infact he admitted having known about it as early as March 2012 when Poovaneswari (SD1) unequivocally told him it was L Prem Anand who took her money. The questions to be asked, why did the defendant in the first place took about ten months for him to come out with his press statement the way he did on 11 January 2012 and 19 January 2012. What other evidence did he expect to gather when he was already in the possession of the VCD downloaded from the CCTV handed over to him by SD1. While the disparaging remarks in the inscription since in the said online article remains allegation without more, the defendant in his impugned press statement on 11 January 2013 clearly had validated the said remarks by confirming the same when he said "he received information confirming that a Penang Municipal Councillor had sought and obtained bribes from a women, as mentioned in an online article".

[54] In his said impugned statement, he says "A Penang Municipal Councillor" ie, in the singular expression. This begs the second question as to why did not he then name the said corrupted councillor, especially when there is nothing to prevent him from excluding the plaintiff from the said allegation.

[55] It is to be noted too, the defendant in his second press statement on 19 January 2013 apart from having said he had hard evidence in the form of a VCD to prove his allegation of bribery against the councillor, had also said "I have proof but I am not naming the culprits. I stand by my earlier statement and I am willing to, face the legal suit from the councillors". This quoted statement, where the word "councillors" there were uttered in the plural expression clearly to by mind made in reference to the plaintiff too, being his image featured there as one of them.

[56] For the aforesaid reasons, it is my finding that the defendant's said impugned statements were indeed directed at all the three councillors who were featured in the said online article, which would mean to include the plaintiff. Any reasonable minded person reading the defendant's impugned statement must have conceived in his mind that the corrupted councillor was either one of them, ie, either the plaintiff or Mr Ong Ah Teong or Mr Prem Anand. I am fortified in my said finding when the plaintiff in his unchallenged evidence said during his tenure as councillor although he was not a member of DAP but was subjected to numerous questions and

A relentless inquiries from his colleagues and friends as to whether he had accepted the bribe as alleged in the impugned statements published in The STAR.

B [57] As to the second issue, ie, whether the impugned statements of the defendant defamatory of the plaintiff, what is required to be found by the court is to see whether the nature of statements has the tendency to excite against the plaintiff the adverse opinion of others. In the case of *Joceline Tan Poh Choo & Ors v. V Muthusamy* [2003] 3 CLJ 705; [2003] 5 AMR 195, the Court of Appeal said:

C Thus, the test of defamatory nature of statement, is its tendency to excite against the plaintiff, the adverse opinion of others, although no one believes the statement to be true. Another test is, would the words tend to lower the plaintiff in the estimation of right thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonestly, D untruthfulness, ingratitude and cruelty.

E [58] Now, the plaintiff in our case today was at the material time holding the position of councillor serving the Majlis Perbandaran Pulau Pinang. To my mind, the words that “a Penang Municipal Councillor had sought and obtained bribe” do possess the tendency to excite an adverse opinion among members of the public against the plaintiff, in his official and personal capacity. The connotations and imputations that the said impugned statement are capable of, are *inter alia*, that the plaintiff was corrupted, had abused his position as councillor, had committed a criminal offence, had no integrity and moral values thus tend to lower the plaintiff in the estimation of right F thinking members of the society. The unchallenged evidence of the plaintiff that his fellow colleagues and friends had relentlessly queried him about his involvement in relation to the said impugned statement clearly illustrates the excitements that was generated by the said defendant’s impugned statement.

G [59] For the foregoing reasons, I am of the view that issue has to be answered in the affirmative.

H [60] As to the third issue ie, the defendant’s defence of justification, it has been well established that it lies upon the defendant to prove that the defamatory imputation is true. (See *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173. In the context of our case today the truth of the defamatory imputation must be one in relation or against the plaintiff and one other.

I [61] The defamatory imputations and connotation of the impugned statements are that the plaintiff had accepted bribe from a woman, the plaintiff had committed this act while holding the position of the councillor, the defendant had received this information and the defendant had VCD recording of a CCTV footage showing the plaintiff receiving bribe from the woman.

[62] It is clear the admission of the defendant himself that he knew as early as March 2012 till the time he made the impugned statement in 11 January 2013 and 19 January 2013, the councillor who was alleged to have taken the money is not the plaintiff.

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[63] For the foregoing reasons, I am inclined to find that the defendant has failed to establish the defence of justification.

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[64] On the fourth issue, ie, the defence of qualified privilege, a lucid explanation of this principle governing this category of defence can be found in the judgment of the Supreme Court in *S Pakianathan v. Jenni Ibrahim (supra)* where Wan Hamzah SCJ (as he then was) held:

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However, there are occasions upon which, on grounds of public policy and convenience, a person may, without incurring legal liability, make statements about another which are defamatory and in fact untrue: *Watt v. Longsdon*. These occasions are called occasions of qualified privilege. A communication made *bona fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty although it contains a criminatory matter which, without this privilege, would be slanderous and actionable: *Harrison v. Bush*. The duty may be legal, social or moral, and the person to whom the communication is made must have a corresponding interest or duty to receive it. The reciprocity is essential: *Adam v. Ward*.

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Then at p. 242 (CLJ); p. 179 (MLJ), His Lordship articulated:

... if the defendant publishes untrue defamatory matter recklessly without considering whether it to be true or not, he is treated as if he knew it to be false. In ordinary cases, what is required on the part of the defamer to entitle him to the protection of the privilege is honest belief in the truth of what he published. But if he was moved by hatred or a desire to injure and used the occasion for that purpose, the publication would be maliciously made even though he believed the defamatory statement to be true. Where the defendant purposely abstained from inquiring into the facts or from availing himself of means of information which lay at hand the slightest inquiry would have shown the true situation, or where he deliberately stopped short in his inquiries in order not to ascertain the truth, malice may rightly be inferred: *Lee v. Ritchie*.

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[65] Now, in this case the defendant said, it was his responsibility as a politician and being entrusted by SD1 to highlight the ill conduct of the particular councillor to help her getting her money back. He declared in The STAR newspaper that he had the VCD downloaded from the CCTV showing proof of the councillor concerned receiving the money from the lady. The question to be asked is why did not he lodge a report to either police or SPRM who have the corresponding duty to receive the report and to act accordingly and why declared it in newspaper with the said impugned statements when the press have no corresponding duty to receive and publish. All the more questionable why the defendant decided to make such

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- A impugned statement only about ten months that was in the year of the impending 13th General Election, from the time he first came to know about such information from SD1, and even then, without exculpating and absolving the plaintiff from the tendency of the adverse opinion of general public against the plaintiff with which his impugned statement is capable of.
- B [66] For the foregoing reasons, I am in agreement with the counsel for the plaintiff that there is no reciprocity of any duties or interest *vis-a-vis* the impugned statement. The surrounding circumstances within which the defendant deem it fit to make that impugned statement only go to show he was motivated by malice and desire to injure the credibility of the Pakatan Rakyat Coalition that was in governance of the Penang State with the corresponding and simultaneous effect of injuring the credibility and reputation of the plaintiff. The defendant is therefore cannot be said to have established or protected by the defence of qualified privilege. Issue No. 4 accordingly answered in the negative.
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- D [67] The fact that defendant had convened a press conference *vide* Sinar Harian on 25 March 2013 exculpating the plaintiff from the said bribery allegation ie, about three weeks after the plaintiff had commenced this suit against him does not to my mind absolve the defendant of his liability in having defamed the plaintiff at the material time. His report to SPRM *vis-a-vis* the said bribery allegation on the 29 March 2013 ie, after the commencement of this action clearly has nothing to do with the plaintiff whatsoever.
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Conclusion

- F [68] For the aforesaid reasons, I am giving judgment to the plaintiff as per his prayer 26 as follows:
- G (a) No order made for (a) and (b) as the defendant has cleared the plaintiff's name *vide* his press statement in Sinar Harian newspaper; although only after the filing of this suit;
- (b)
- (c) General damages in the sum of RM80,000;
- (d) Interest at 5% from the time of filing of the suit till full realisation;
- H (e) Cost of RM20,000.